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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

In re:

MICHAEL LAWRENCE MERRICK, JEANNE MARIE MERRICK

Debtors

Chapter 13

Case No. 10-48978-RLE-13

**MOTION TO VALUE SECURITY,
DETERMINE STATUS OF CLAIM AND
DECLARE VOID LIEN**

Pursuant to 11 U.S.C. Section 506(a) and Fed. R. Bankr. P. 3012, debtors, by their attorney, M. Colby Freeman, hereby move the Court for an Order valuing the below described security, determining the status of the below referenced creditor's claim and declaring void the lien of creditor upon chapter 13 discharge .

FACTS

The collateral sought to be valued in this motion is the property commonly known 21471 Orange Ave, Castro Valley, Alameda County, CA 94546, more particularly described as: "Lot 1, 'Tract 635', Filed October 27, 1942, Map Book 8 Page 42, Alameda County Records." APN: 415-0060-025

1 The creditor whose lien validity and claim status is to be determined by this motion is:

2 Citibank, N.A.
3 3900 Paradise Road, Suite 127
4 Las Vegas, Nevada 89109

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7 **DEBTOR(S) VALUATION AND BASIS:** \$411,694.00 as stated on Schedule A of the
8 bankruptcy petition and chapter 13 plan. This value is based on a survey of the immediate area
9 surrounding that property, and a look at recent comparable sales.

10 The subject property is encumbered as follows: a 1st deed of trust in favor of Sovereign
11 Bank in the amount of \$487,005.19, and a 2nd deed of trust, recorded with the Recorders office of
12 Alameda County on March 9, 2006 as **Instrument #2006088896** in favor of Citibank, N.A., in
13 the amount of \$72,586.63.

14 **POINTS AND AUTHORITIES**

15 11 U.S.C. 506(a)(1) provides that a creditor has an allowed secured claim to the extent
16 it's of the creditor's interest is the estate property, and an unsecured claim to the extent it's claim
17 exceeds the value. 11 U.S.C. Section 506(d) provides that the to the extent that a lien secures a
18 claim against the debtor that is not an allowed secured claim, such lien is void.
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20 11 U.S.C. section 1322(b)(2) provides that a plan may modify the rights of holders of
21 secured claims, other than a claim secured only by a security interest in real property that is the
22 debtor's principal residence. . . . However where a creditor's claim, which is seemingly secured
23 only by an interest in the debtor's primary residence, is determined to be entirely unsecured
24 pursuant to 11 U.S.C. section 506, the lien is void. See In re Zimmer, 313 F.3d 1220 (9th Cir.
25 2002).

26
27 **WHEREFORE**, debtor prays for the following relief:
28

1 1. That the collateral is valued at \$411,694.00.

2 2. That the claim of Citibank, N.A. be valued pursuant to 11 U.S.C. section 506(a) and

3 thereby determined to be entirely unsecured, and

4 3. That upon discharge under 11 U.S.C. section 1328(a), the 2nd deed of trust, recorded with

5 the Recorders office of Alameda County on March 9, 2006 as **Instrument #2006088896**

6 in favor of Citibank, N.A., in the amount of \$72,586.63, is void.

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9 Dated: October 4, 2010

10 _____
11 /s/ M. Colby Freeman _____

12 M. COLBY FREEMAN

13 Attorney for Debtor(s)

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